IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.3.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.12752 of 2004

A.Dhanapal .. Petitioner

vs.

1. Secretary to Government,
Home Department,
Secretariat,
Chennai-600 009.

2. Director General of Police,
Mylapore, Chennai-600 004.

3. Superintendent of Police,
Cuddalore District.

4. Tamil Nadu Administrative Tribunal,
Rep. by Registrar,
Chennai-600 104. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, as stated therein.

For petitioner : Mr.M.Gnanasekar for
Mr.A.Kalaiselvan

For respondents: Mr.V.Raghupathy, Govt. Pleader
for RR-1 to 3
R-4 Tribunal.

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ORDER

R.SUDHAKAR,J.

The writ petition has been filed for issuance of a writ of certiorarified mandamus, calling for the records on the file of the fourth respondent in connection with the orders passed in O.A.No.2158 of 2002, dated 16.7.2002 and in R.A.No.19/2003, dated 9.7.2003 and quash the same and consequently direct the respondents 1 to 3 reinstate the petitioner into service with all consequential benefits.

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2. Brief facts of the case are as follows:

The petitioner joined the services of the Police Department as Grade-II Police Constable on 15.11.1970 and served in the same

capacity until the date of his dismissal from service. While the petitioner was working in Thiruppapuliyur Police Station in Cuddalore District, departmental proceedings were initiated in P.R.No.61 of 1991 for the following delinquencies:

> "(i) Reprehensible and improper conduct in having been keeping one Banumathi, W/o Ramasamy of Vannathur as his concubine and begot her three children by deceit means of giving false promises of marrying her.
>
> (ii) In having married one Thenmozhi dishonestly for purpose of having dowry by concealing his conduct of keeping Banumathi as his concubine.
>
> (iii) In having tortured both Banumathi and Thenmozhi by frequently beating them for getting money in also having illegal contacts with several ladies.
>
> (iv) In having attempted to marry another girl Kalaiarasi on 5.5.91 for purpose of dowry deceiving his wife and concubine.
>
> (v) In having brought discredit to police force by having illegal contact with several ladies and attempting to marry for purpose of money."

The case of the Department is that the petitioner was married to one Thenmozhi, D/o Mayavan of Vellaiyur on 8.6.1984 and through her, he has two children and even before the marriage, he had contact with one Banumathi and through her, he has three children. While living with both Banumathi and Thenmozhi, the petitioner demanded money and harassed them to get money from their parents. The petitioner was also having illegal contact with Kalaiarasi, D/o late Krishnamoorthy, a deceased Sub-Inspector of Police, native of Marnatham and had made arrangements to marry her on 5.5.1991 at Pali New Colony, even though he was living with his wife and the said Banumathi. The wife and Banumathi had given a complaint on 4.5.1991 to the Superintendent of Police of Cuddalore District and to the Sub-Inspector of Police (Law and Order), Ulundurpet. The gist of the complaint signed by the wife and the said Banumathi is to the effect that the petitioner, after driving away the wife and Banumathi, is attempting to marry the said Kalaiarasi in his native place deserting the two ladies and the family of five children. Therefore, they sought for appropriate legal action to be taken against the petitioner. The photographs of the family consisting of the wife and Banumathi and the wedding invitation card of the first marriage with Thenmozhi was also enclosed along with the complaint. Based on the complaint, F.I.R.No.339/91 dated 5.5.1991 was registered at the early hours on 5.5.1991 and the Inspector of Police, Ulundurpet along with the Sub-Inspector of Police (Law and Order), Ulundurpet, rushed to the scene-village Pali New Colony and noticed that the marriage function was ready to commence on 5.5.1991 with Kalaiarasi and the petitioner. The Inspector of Police arrested the petitioner at 6.00 hours on 5.5.1991. As the petitioner-accused was adamant to obey the orders of the Police, minimum force was used to arrest the petitioner. He was thereafter brought to Ulundurpet Police Station at 7.30 hours and remanded on the same day. The petitioner was charged for the offences under Sections 419, 420, 498-A and 506 (ii) IPC. In addition to the criminal proceedings,

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charges under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules was framed and served on 1.9.1991, the details of the charge memo have been set out earlier. The petitioner participated in the enquiry and perused the connected records on 10.10.1991 and oral enquiry commenced on 12.10.1991. P.Ws.1 to 3, namely Banumathi, Thenmozhi and the father of Thenmozhi were examined. Thereafter, further oral enquiry was held on 11.1.1992 and P.Ws.4 and 5 were examined. On 22.2.1992, P.W.6 was examined. The petitioner-delinquent did not attend the oral enquiry on 11.1.1992, though a memo was served on him on 10.1.1992. However, he sent a letter dated 10.1.1992 stating that he has to go to High Court in connection with the appeal. The subsequent memo dated 17.1.1992 fixing the oral enquiry on 22.1.1992 was sent by Registered Post to the petitioner/delinquent and also through personal messenger. But the petitioner refused to receive the same. In their evidence before the enquiry officer, P.Ws.1 and 2 accepted that they gave a petition on 4.5.1991 to stop the marriage of the petitioner with Kalaiarasi believing the words of certain villagers of Paliyur who had met them in Ulundurpet and in order to prevent the marriage, they had given the petition on 4.5.1991 to the Superintendent of Police, Cuddalore and also to the Uludurpet Police Station. They accept that they have signed the petition. However, it is stated that they did not give the petition to arrest the delinquent and that the villagers' version about the marriage with Kalaiarasi was false and no such thing had happened. P.W.2 has also given similar statement to the effect that the petition was given to the Police in the night of 4.5.1991 to prevent the marriage of the petitioner with Kalaiarasi. However, she denies that such an incident happened. P.W.3 is the father of the wife of the petitioner who stated that he did not accompany the daughter at the time of the complaint. The other witnesses are Police Officers who acting on the complaint proceeded to the place, namely Pali New Colony and were responsible for stopping the marriage of the petitioner with Kalaiarasi on 5.5.1991, which eventually led to the arrest of the petitioner. The petitioner did not submit an explanation to the charge memo. However, he stated that he will submit his explanation after the completion of the oral enquiry. In the oral enquiry held on 12.10.1991, there was no objection by the petitioner, when P.Ws.1 and 2 were examined. P.W.3 was not cross-examined. Examination of P.Ws.4 and 5 was fixed on 11.1.1992 on prior intimation to the petitioner. However, the petitioner only wanted the enquiry to be deferred till the disposal of the criminal case. It appears that the request letter dated 10.1.1992 was received on 11.1.1992 after the examination of P.Ws.4 and 5 was over. Examination of P.W.6 was posted on 22.2.1992 and the communication dated 17.2.1992 sent to the petitioner by special messenger PC 626 was declined and the communication by post was also returned with endorsement "refused". The petitioner therefore did not avail of the opportunity of cross-examining the official witnesses. By memo dated 22.2.1992, the petitioner was informed about the nature of oral enquiry conducted till then and the petitioner was called upon to furnish his list of defence witnesses and documents, if any. The petitioner once again refused to receive the communication. However, by a petition dated 2.3.1992, he submitted that he would attend the oral enquiry only after the disposal of the appeal in the High Court. As the petitioner failed

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to avail the opportunity to produce documents or witnesses in his support, the petitioner was called upon to give his statement of defence, by memo dated 13.3.1992, which was sent by Registered Post and the same was returned undelivered with endorsement "refused". The personal communication through Police could not be served as no one was in the house and the memo was pasted on the door in the presence of witnesses. The petitioner was therefore not co-operating with the oral enquiry and he did not furnish his statement of defence. Therefore, the enquiry officer proceeded to go ahead with the enquiry and found that though initially P.Ws.1 and 2, the wife and Banumathi were serious about the complaint to prevent the marriage of the petitioner with Kalaiarasi, he found that for the reasons best known to them, they had subsequently changed their stand and denied such an incident. However, based on the complaint, which was originally lodged on 5.5.1991 and the various incidents which happened at that point of time, the enquiry officer came to the conclusion that all the five charges were proved. It is pertinent to point out that the petitioner avoided participating in the enquiry only when P.Ws.4 and 5 were examined and he has failed to submit his explanation.

3. The enquiry report H-1/PR.61/91, dated 30.5.1992 was sought to be served on the petitioner and since he refused to receive the same, it was pasted on the residential door of the petitioner in the presence of the Village Administrative Officer on 31.7.1992. Even after the service of the report of the enquiry officer as above, there was no response from the petitioner. Therefore, by proceedings dated 21.9.1992, the petitioner was dismissed from service. As against the order of dismissal, it is admitted that no appeal has been filed. Thereafter, the petitioner after nearly seven years made a representation on 20.8.1999 to the second respondent-Director General of Police stating that in the criminal case in C.C.No.190/91, by order dated 25.11.1991, the petitioner was honourably acquitted and by order dated 16.6.1994 in Crl.R.C.684 of 1991, certain observations made by the learned Judicial Magistrate, were expunged. Therefore, it was contended that the order of acquittal has been confirmed by the High Court and he was honourably discharged and consequently, he should be reinstated. It was also contended that the findings in the departmental enquiry were contrary to the findings of the criminal Court. Therefore, he prayed for quashing the order of disciplinary authority dismissing him from service and to reinstate him in service with consequential benefits. This was followed by another representation dated 8.1.2001 which is the very same representation made on 20.8.1999. Since, according to the petitioner, no action has been taken on his representation, he filed O.A.No.1093 of 2001 for a direction to pass orders on the representation dated 20.8.1999 and 8.1.2001. The Tribunal, by order dated 9.2.2001, directed that petitioner's representation should be considered on merits within a period of two months. Subsequent to the order of the Tribunal, by proceedings Rc.No.30749/AP.1(2)/2001, dated 26.4.2001, the second respondent-DGP passed a detailed order on the representations and held that the petitioner had not participated in the enquiry nor did he submit his written statement of defence. Though the two witnesses, namely the wife of the petitioner and Banumathi having turned hostile, taking note of the statement of the two ladies in the preliminary enquiry and the

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record of proceeding in the oral enquiry, the second respondent-DGP concluded that there was no miscarriage of justice and principles of natural justice were followed and that the disciplinary proceedings were conducted in accordance with the Rules. The second respondent held the order of the disciplinary authority as correct based on the principle of preponderance of probabilities, which is the paramount consideration and requirement for coming to the conclusion in the departmental proceedings. He therefore rejected the representations as devoid of merits. As against this order of the second respondent, the petitioner filed an appeal dated 15.12.2001 to the first respondent-Secretary to Government. In the appeal to the first respondent, it was contended that the second respondent ought not to have confirmed the order of dismissal solely based on the preliminary enquiry report. Further, there was no opinion of the disciplinary authority based on the evidence adduced during the course of oral enquiry and it is a case of no evidence and therefore, there was violation of principles of natural justice. However, even before the appeal could be disposed of, O.A.No.2158 of 2002 was filed before the Tribunal for the following relief:

> "To call for the records of the 3rd respondent herein pertaining to the order D.O.2439/91; C.No.H.1/PR.61/91 dated 21.9.1992, awarding the punishment of dismissal from service and the records of the 2nd respondent herein pertaining to the order R.C.No.30749/AP.1(2)/2001 dated 26.4.2001 confirming the order of dismissal from service and quash the same and consequently direct the respondents to reinstate the applicant into service with all consequential benefits and thus render justice."

The Tribunal, by order dated 16.7.2002, considered the case of the petitioner in detail and dealt in depth to the various incidents which led to the arrest of the petitioner based on the complaint of the petitioner's wife and Banumathi who is admittedly living with the petitioner. Various factual materials were considered by the Tribunal and are set out in paragraphs 11,12, 13 and 14 of the order of the Tribunal. The Tribunal came to the conclusion that though the charge of demand for money or torture was not substantiated in view of the two main witnesses — the wife and Banumathi turning hostile, the fact remains that there was ample evidence before the enquiry officer to hold the charge of reprehensible and immoral conduct of the petitioner, thereby bringing discredit and embarrassment to the entire Police force, which is the sum and substance of the charge memo. The Tribunal rejected the plea of the petitioner that the criminal Court had found him not guilty and therefore, the departmental proceedings on the same set of charges and the finding of guilt, were not valid. The Tribunal came to the conclusion that the charge in the criminal case is relating to torture and harassment of the wife and therefore, Sections 498-A and 506 (ii) IPC were invoked. However, the subject matter of the disciplinary proceedings is entirely different as is evident from the charges set out earlier. It relates to the misconduct of the petitioner and his adulterous way of life living with one Banumathi and his attempt to marry Kalaiarasi suppressing the earlier marriage with Thenmozhi. The

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fact that the petitioner was attempting to marry Kalaiarasi was thwarted by the timely intervention of the Police Officers who were alerted by the wife and Banumathi. The Police Officers were cited as witnesses and their evidence is not controverted. The Tribunal came to the conclusion that the order of dismissal was rightly passed in the facts and circumstances of the case and found that it was not excessive, severe or disproportionate to the proved charges framed under Rule 17(b) of the Rules. While dismissing the above application, the Tribunal considered yet another issue regarding delay and laches. The Tribunal felt that the application should be dismissed on the ground of limitation and laches on the part of the petitioner, as the order of dismissal was passed on 21.9.1992 and no appeal was preferred as against the said order of dismissal. The Tribunal also took into consideration one important factor that even before the order dated 21.9.1992 imposing punishment by way of dismissal from service was passed, the criminal case has ended in acquittal. The petitioner did not prefer an appeal against the order of dismissal even at that point of time. From 1992 to 2001, the petitioner kept quiet and only in 2001, a representation was made to the DGP, making it appear as though it is an appeal, and in this process, the petitioner has tried to re-agitate the issue after long lapse of time. In any event, the Tribunal also came to the conclusion that it was only a representation to the DGP and the Tribunal, by its earlier order, only directed that the same should be considered. The order dated 26.4.2001 passed by the DGP cannot be considered as an order in appeal and it is only a rejection of memorandum which admittedly is belated. In any event, the appeal became time barred long before 2001. Therefore, only to get a fresh cause of action and a starting point for limitation, the said representation was made. Therefore, the Tribunal came to the conclusion that the order of dismissal had come to a finality long before the filing of the Original Application. The Tribunal dismissed the O.A. both on merits as well as on the grounds of limitation, delay and laches. Review Application No.19 of 2003 was filed before the Tribunal, which was also dismissed by order dated 9.7.2003. As against the same, the writ petition has been filed.

4. The only contention of the petitioner now is that in terms of Rule 3(b)(ii) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, before passing the order imposing penalty of dismissal from service, the copy of the report referred to in Rule 3(b)(i) was not furnished and no show cause notice was given granting him an opportunity against the penalty proposed to be inflicted.

5. Rule 3(b)(i) and (ii) reads as follows:

> "(b)(i) In every case where it is proposed to impose on a member of a service any of the penalties specified in clauses (d), (h), (i) and (j) of rule 2 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is framed and of any other circumstances which it is proposed to take into

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consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing refuse to call a witness. After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence.

Whether or not the person charged desired or had an oral enquiry, he shall be heard in person at any stage if he so desires before final orders are passed. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of evidence, if any, and a statement of the findings and the grounds thereof.

(ii) After the inquiry or personal hearing referred to in clause (i) has been completed and after the authority competent to impose the penalty mentioned in that clause has arrived at provisional conclusions in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report referred to in clause (i) and be called upon to show cause, within a reasonable time not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation in this behalf submitted by the person charged shall be duly taken into consideration before final orders are passed:

Provided that such a representation shall be based only on the evidence adduced during the enquiry."

6. On going through the records produced at the time of hearing and also based on the various factual details as culled out from the order of the Tribunal, the various contentions now raised by the counsel for the petitioner cannot be accepted.

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7. The petitioner having accepted the charge memo, participated on the first date of enquiry when his wife and Banumathi were examined. However, he refused to receive the notice for subsequent oral enquiry. The petitioner has also not submitted his statement of defence inspite of specific memo having been served on him. In view of the above, the authority had no other option except to proceed with the enquiry as contemplated under Rule 3(b)(i) and submit a report. The enquiry report dated 30.5.1992 was sought to be served on the petitioner in terms of Rule 3(b)(ii) and the petitioner having refused to accept the same, it was served by way of affixture. It is therefore evident that the report of the enquiry was served on the petitioner. Even after receipt of the enquiry report, he has not submitted his objections, if any, to the said report. In this case, the copy of the enquiry report dated 30.5.1992 was served by way of affixture on 31.7.1992 and after a reasonable time, as contemplated under the Rules, the order of dismissal was passed on 21.9.1992. The conduct of the petitioner from the inception clearly indicates his intention that he is not interested in participating in the enquiry proceedings and submit his statement of defence. Therefore, the contention of the petitioner that the subsequent show cause notice in terms of Rule 3 (b)(ii) of the Tamil Nadu Police Service (Discipline and Appeal) Rules, indicating the intention of the disciplinary authority to impose punishment, has not been served on him, cannot be accepted.

8. The petitioner, having refused to receive the copy of the enquiry report, which subsequently was served by way of affixture, has clearly abandoned his rights in the departmental proceedings. When the petitioner consciously refused to participate in the departmental proceedings, the question of issuing separate show cause notice in terms of Rule 3(b)(ii) calling upon him to show cause, would be an empty formality, as has been held by the Apex Court in AIR 2000 SC 2783 (Aligarh Muslim University vs. Mansoor Ali Khan).

9. Even after the enquiry report was served on him by way of affixture, he has not come forward with any response. The conduct of the petitioner clearly shows that he is not interested in proceeding with the departmental enquiry. The question of violation of principles of natural justice or prejudice, much less, real prejudice, therefore does not arise in this case. In the case of State Bank of Patiala vs. S.K.Sharma (AIR 1996 SC 1669), the Apex Court has laid down the principles to be kept in mind while dealing with the matters relating to disciplinary enquiries and orders of punishment and in paragraph 32, the Supreme Court held as follows:

> "32. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
>
> (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions

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governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e. whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

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(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B.Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice – or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action – the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e. between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality

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of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

10. In this case, since the conduct of the petitioner clearly establishes that he has no intention to participate in the departmental proceedings and refused to receive the report of the enquiry proceedings and the fact that no appeal has been filed against the order of dismissal, would only go to show that the petitioner is not serious in pursuing the departmental proceedings on merits. It can be inferred that the petitioner has intentionally waived his rights. The matter has become final and the petitioner cannot plead that there is a violation of Rules after a lapse of nine years. Therefore, the non-observance of the abovesaid rules will not vitiate the proceedings and the same is not liable to be interfered with.

11. The subsequent representations made in the years 1999 and 2001 to the Director General of Police is only to clutch at limitation. The acquittal by the criminal Court, which on the peculiar facts and circumstances of the case, extended the benefit of doubt to the petitioner, as two important witnesses, namely the wife and Banumathi had turned hostile. The fact however remains that at the earliest point of time, there are materials to show that the petitioner while living with two women, was attempting to get married to another one Kalaiarasi on 5.5.1991 and at that point of time, he was arrested by the Police on compliant by the wife of the petitioner. The charges framed against the petitioner are grave in nature and therefore, the charge memo was issued under Rule 17(b) of the disciplinary Rules. The petitioner has not participated in the enquiry proceedings except on the day when his wife was examined. There is no denial to the various charges made in the charge memo. The charge in the departmental proceedings and criminal case is different. The report of the enquiry officer has been submitted to the disciplinary authority by proceedings No.H-1/PR.61/91, dated 30.5.1992 and the punishment of dismissal from service was imposed,

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which order of the disciplinary authority has not been challenged so far on any of the grounds now agitated after nine years. Hence, we find that the present proceedings lack bona-fides and there is no merit in the contention of the petitioner. The contention regarding violation of the Rules is raised belatedly as a last resort by the petitioner to somehow salvage the sunken ship. The petitioner has not shown diligence and sincerity in pursuing the departmental proceedings. On the contrary, his conduct of withdrawing from the proceedings half-way, clearly disentitles him from raising the plea of violation of the rule and the plea that principles of natural justice as being violated besides pleading prejudice, cannot be sustained.

12. The other contention made by learned counsel for the petitioner is that the second respondent-DGP, while considering the representation made in the year 1999, has confirmed the order of dismissal and rejected the prayer of the petitioner. Such an order was challenged before the Tribunal. The limitation in this case would start from the order of the second respondent-DGP dated 26.4.2001 and the Original Application is well within time. Such an argument cannot be accepted. Admittedly, the enquiry report is dated 30.5.1992 and the order of dismissal from service was passed on 21.9.1992. There is no appeal filed against the said order of dismissal. The subsequent proceedings based on the so-called representations of the years 1999 and 2001, cannot give any right to the petitioner to plead that his claim in the Original Application is bona-fide and is not hit by delay and laches. Such a plea cannot be accepted and the same is rejected. The subsequent claim made is only based on a representation to the DGP and it is not an appeal against the order of dismissal. The Original Application has been filed long after the order of dismissal dated 21.9.1992. The petitioner has to be non-suited only on the ground of delay and laches as rightly held by the Tribunal.

13. In the result, there is no merit in the writ petition and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The Secretary to Government,
Home Department,
Secretariat,
Chennai-600 009.

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2. The Director General of Police,
Mylapore, Chennai-600 004.

3. The Superintendent of Police,
Cuddalore District.

4. The Tamil Nadu Administrative Tribunal,
Rep. by Registrar,
Chennai-600 104.

1 cc to Mr. Kalaiselvan, Advocate, Sr. 11258
1 cc to Govt. Pleader, Sr. 11581

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